

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5803 of 1989

For Approval and Signature:

HON'BLE MISS JUSTICE R.M.DOSHIT

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the concerned : NO
Magistrate/Magistrates, Judge/Judges, Tribunal/Tribunals?

G M PARMAR

Versus

STATE OF GUJARAT & ANR.

Appearance:

1. Special Civil Application No. 5803 of 1989

MR DIPAK RAWAL for MR ANAND for the Petitioner
MR ASHISH DESAI, AGP for Respondent No. 1
MS RV ACHARYA for Respondent No. 2 ABSENT

CORAM : HON'BLE MISS JUSTICE R.M.DOSHIT

Date of decision: 29/09/2004

ORAL JUDGEMENT

The petitioner, a Supervisor (redesignated as Additional Assistant Engineer), challenges the combined final seniority list of Supervisors (Civil) in State service and Supervisors (Civil) in panchayat service as on 31st December, 1976 published on 27th February, 1984 in so far as the petitioner has been assigned seniority at Serial No.1483 and not at Serial No.673 on the basis of continuous officiation.

By order dated 14th December, 1967 the petitioner was appointed as Supervisor (Civil) by the District Panchayat, Kachchh. The petitioner applied for transfer to the District Panchayat, Ahmedabad. By order dated 19th May, 1974 made by the Development Commissioner the transfer of the petitioner from District Panchayat, Kachchh to District Panchayat, Ahmedabad was permitted on condition, inter alia, that the petitioner cannot claim seniority over the seniority of the last employee in service. Pursuant to the said order, by order dated 15th June, 1974 made by the District Development Officer, Kachchh, the petitioner was transferred to the District Panchayat, Ahmedabad. Pursuant to the said order the petitioner joined Ahmedabad District Panchayat on 27th June, 1974.

Under the provisions contained in the Gujarat Panchayat Service (Promotions to Cadres in State Services) Rules, 1974 (hereinafter referred to as "the Rules of 1974"), the petitioner is eligible for promotion to the Gujarat Service of Engineers, Class-II. For the purpose of promotion to the Gujarat Service of Engineers, Class-II, the State Government prepared a tentative combined seniority list of Supervisors (Civil) in the State service and in the service of panchayats. In the said tentative combined seniority list published on 2nd May, 1977, the petitioner was assigned seniority at Serial No.173 on the basis of continuous officiation from 4th January, 1968 i.e. the date of his joining service of District Panchayat, Kachchh. A revised tentative combined seniority list came to be published on 25th January, 1983 and the final combined seniority list came to be published on 27th February, 1984. In the said final seniority list the petitioner has been assigned seniority at Serial No.673 on the basis of his joining the service on 4th January, 1968 and at Serial No.1483 on the basis of his joining the service of Ahmedabad District Panchayat on 27th June, 1974. Feeling aggrieved, the petitioner has preferred the present petition.

Learned advocate Mr.Rawal has submitted that the

action of the State Government in assigning the petitioner seniority from the date he joined the service of Ahmedabad District Panchayat is illegal, contrary to the principle of equality enshrined in Articles 14 and 16 of the Constitution of India and contrary to the Rules of 1974. He has submitted that under the Rules of 1974 not only the petitioner is entitled to be considered for promotion to the State service but he is also entitled to seniority on the basis of continuous officiation i.e. from the date he joined the panchayat service. He has submitted that by assigning the seniority from the date the petitioner joined the service of Ahmedabad District Panchayat the petitioner shall lose seniority against as many as 800 Supervisors in the State service who admittedly had joined the State service after the petitioner joined the panchayat service. If at all the petitioner had agreed to loss of seniority, it was in respect of the existing Supervisors of the Ahmedabad District Panchayat and not qua the Supervisors in the State service or Supervisors in the other District Panchayats. The petitioner has, thus, been meted discriminatory treatment resulting into loss of promotion to the State service. He has also submitted that in case of one Shri I.G.Navani, Supervisor in the District Panchayat, Ahmedabad, transferred to the District Panchayat, Kachchh at his own request, the State Government has adopted a different standard. The said Shri Navani has been given seniority from the date he joined the service of the District Panchayat, Ahmedabad and not from the date he was transferred to the District Panchayat, Kachchh, on condition of loss of seniority. Thus, amongst the panchayat servants also the State Government has adopted different standards for determination of seniority. The petitioner has, therefore, claimed seniority as a Supervisor from 4th January, 1968 on the basis of continuous officiation and consequential right to promotion to the State service under the Rules of 1974. He has also submitted that transfer of panchayat servants from one panchayat to the other is governed by the Gujarat Panchayat Service (Transfer of Servants) Rules, 1968 (hereinafter referred to as "the Rules of 1968"). He has submitted that Rule 4 of the Rules of 1968 provides conditions for inter-district transfer. With respect to such transfer made pursuant to the application made by the member of the panchayat service, such transfer should entail loss of seniority i.e. such transferred servant shall not claim seniority over the person who ranks last in a post having clear vacancy, in the cadre to which such member may be appointed, as a result of such transfer. In the present case, the petitioner was transferred to the cadre

of Supervisor (C) in the District Panchayat, Ahmedabad and not to the combined cadre of Supervisors. Hence, the petitioner cannot be made to lose seniority in the combined cadre of Supervisors. He has also submitted that the cadre of Supervisor (C) in panchayat service constitutes one single cadre. Hence, the impugned action of the State Government in assigning the seniority to the petitioner from the date he joined the service of the Ahmedabad District Panchayat is contrary to the said Rule 4 also. In support of his contention Mr. Rawal has relied upon the judgment of the Hon'ble Supreme Court in the matter of Ramchandra Shankar Deodhar and others v/s. The State of Maharashtra and others [AIR 1974 SC 259].

In the above referred matter of Ramchandra Shankar Deodhar and others (supra), the combined seniority list for appointment as Deputy Collectors in State service prepared by the State of Maharashtra was the subject matter of challenge. The lower cadre of Mamlatdar was divided into six divisions and divisional seniority of Mamlatdars was maintained. For promotion as Deputy Collector separate divisional select lists of the Mamlatdars who were found fit for promotion as Deputy Collector were prepared. Promotion to the post of Deputy Collector was made on the basis of such divisional select list. The Hon'ble Court found the method adopted by the State of Maharashtra to be contrary to the principle of equality. The Hon'ble Court observed that, "...Now, it is clear that this procedure suffers from a serious infirmity in that it provides for promotions to the State cadre of Deputy Collectors to be made on the basis of divisional select lists. That clearly amounts to denial of equality of opportunity to Mamlatdars in the State in the matter of promotion to the cadre of Deputy Collectors."

In my view, the claim made in the present petition is not sustainable. Nor the aforesaid judgment shall apply to the facts of the present case. It is evident that the cadre of Supervisors (C) constitutes a separate cadre under each panchayat and the State. Transfer from one cadre to another i.e. from one panchayat to another panchayat or to State or vice versa is not permissible except in accordance with the Rules of 1968. Rule 3(1) of the Rules of 1968 empowers the Development Commissioner to transfer a member of panchayat service belonging to a district cadre to the corresponding cadre in the other district by an order in writing if, inter alia, "an application is made to the District Development Officer in that behalf by the member and the District Development Officer of the other

District agrees to such transfer under sub-rule (2)". Sub-rule (2) provides for the procedure to be followed for transfer made under sub-rule (1). Rule 4 thereof provides for the conditions. Clause (i) of the proviso thereto reads as under :

"in the case of transfer under sub-clause (ii) of clause (a) and clause (b) of sub-rule(1) of rule 3, the member shall not claim seniority over the person who ranks last in a post having clear vacancy, in the cadre to which such member may be appointed, as a result of such transfer;"

The order of transfer dated 19th May, 1974 also specified that the petitioner cannot claim for the seniority other than the seniority of the last serving employee. The petitioner did accept the said order of transfer and joined the service of the Ahmedabad District Panchayat on 27th June, 1974. Hence, in view of the statutory condition contained in Rule 4 of the Rules of 1968 and the condition of his transfer, on his transfer to the District Panchayat, Ahmedabad the petitioner shall take seniority in the cadre of Supervisor (C) below the supervisors in the employment of the Ahmedabad District Panchayat i.e. from the date he joined the service of the Ahmedabad District Panchayat. Rule 3 of the Rules of 1974 provides for publication of the combined seniority list. Sub-rule (2) thereof reads as under :

"The Seniority list referred to in sub-rule (1) shall be prepared on the basis of the length of continuous service of the person in the post or the cadre from which such person is eligible for promotion so however that the inter se seniority of persons belonging to the State Service or, as the case may be, Panchayat Service is maintained."

The above sub-rule does provide for seniority on the basis of length of continuous service in the post or the cadre and also for maintaining inter se seniority of persons belonging to the State service or the Panchayat service. As recorded hereinabove, service under each panchayat is a separate cadre. For the purpose of promotion to the State service from the cadre of Ahmedabad District Panchayat what should be relevant is the length of continuous service in District Panchayat, Ahmedabad. The petitioner's claim for seniority from the date he joined the service of District Panchayat, Kachchh is, therefore, contrary to the above referred Rules of 1968 and Rules of 1974. The petitioner, having agreed to

loss of service for the purpose of seniority, is now estopped from claiming the benefit of service rendered under the District Panchayat, Kachchh for the purpose of seniority. In my opinion, therefore, the petitioner shall take placement in the combined seniority list on the basis of the length of continuous service in the District Panchayat, Ahmedabad i.e. the petitioner has rightly been assigned the seniority at Serial No.1483 in the impugned seniority list published on 27th February, 1984.

As to the instance of Mr.I.G.Navani, he has been placed in the impugned seniority list at Serial No.1273 i.e. on the basis of continuous officiation from 3rd October, 1972. Learned advocate Mr.Rawal has submitted that 3rd October, 1972 is the date the said Shri Navani was appointed in Ahmedabad District Panchayat. By order dated 15th June, 1974 the said Shri Navani was transferred from Ahmedabad District Panchayat to Kachchh District Panchayat at his request, on condition of loss of seniority. Hence, the petitioner is entitled to a similar treatment and assignment of seniority from the date he joined the service of the District Panchayat, Kachchh i.e. 4th January, 1968. Though the petition is pending hearing for 15 years, till the date the State Government has not filed counter affidavit nor it has contested the petition. The factual averment made with respect to the said Shri Navani has not been controverted. As I have held that in view of the relevant statutory provisions the length of continuous service of the member of the Panchayat service in the cadre from which he is eligible for promotion is relevant for the purpose of seniority and, as the petitioner has been correctly assigned seniority at Serial No.1483, the petitioner cannot be permitted to steal a march over the other Supervisors (C) in the Ahmedabad District Panchayat who were senior to him on the ground that Shri Navani has been given a favourable treatment. The right course of action should be that the said Shri Navani be assigned the correct seniority after ascertaining the relevant dates and after affording him opportunity of showing cause and hearing, if need be.

In view of the above discussion the petition is dismissed. Rule is discharged. There shall be no order as to cost.

The State Government is directed to examine the position of the aforesaid Shri I.G.Navani at Serial

No.1273 in the impugned seniority list published on 27th February, 1984. If he is found to have been assigned wrong seniority, he be assigned correct seniority keeping in view the date of his transfer to District Panchayat, Kachchh. If need be, he be given opportunity of showing cause and of hearing.

(Ms. R.M.Doshit, J.)

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